Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance Pursuant	)	
To 47 U.S.C. §160(c) to Accelerate Investment	)	WC Docket No. 18-141
In Broadband and Next-Generation	)	
Networks	)	
	)	
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	)	

Reply Comments of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc.

William P. Hunt III
SVP, General Counsel and Secretary
TPx Communications
515 S. Flower Street, 45th Floor
Los Angeles, CA 90071
(303) 268-5420 (tel)
william.hunt@tpx.com

Andrew D. Lipman
Tamar E. Finn
Patricia Cave
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541
202.739.3000 (tel)
202.739.3001 (fax)
Andrew.lipman@morganlewis.com
tamar.finn@morganlewis.com
patricia.cave@morganlewis.com

Counsel for U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all d/b/a TPx Communications

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REPLY COMMENTS OF U.S. TELEPACIFIC CORP.,
MPOWER COMMUNICATIONS CORP.,
AND ARRIVAL COMMUNICATIONS, INC.

I. Introduction and Summary

The opening comments to the petition filed by USTelecom for forbearance from legacy unbundled network elements ("UNEs") and resale obligations ("Petition")[1] paints a bleak communications marketplace devoid of true competition and rampant with unjust and unreasonable prices. The landscape is so bleak that only two entities offered support for the Petition and even that was little more than tired, regulatory platitudes and economic theory. That picture stands in stark contrast to the public interest organizations,[2] state public utility and

[1] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018) ("USTelecom Petition"); *See also,* Public Notice, *Pleading Cycle Established For Comments on USTelecom's Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, WC Docket No. 18-141, DA 18-475 (rel. May 8, 2018) ("*Public Notice*").

[2] *See* Comments of the Center for Democracy & Technology (filed Aug. 6, 2018); Opposition of Public Knowledge et al. (filed Aug. 6, 2018); Comments of the Electronic Frontier Foundation (filed Aug. 6, 2018).

service commissions (collectively, "State Regulators"),[3] and non-ILEC service providers[4] whose evidence shows that granting the Petition will destroy the fragile, competitive marketplace for communication services and contravene the intent of Congress when it imposed unbundling obligations in Section 251(c) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In light of the evidence of harm that would be caused by grant of the Petition U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., all doing business as TPx Communications (collectively "TPx"), urge the Commission to deny it. The evidence of harm is so overwhelming that granting the Petition would be arbitrary and capricious.

Nearly all opening comments, with the exception of Verizon and the Internet Innovation Alliance, oppose the Petition or express substantial concern about the future of local competition in telecommunications markets if the Commission were to grant nationwide forbearance. In particular, the continued importance of UNEs and resale to competitive markets, both for entry

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[3] *See* Comments of the Ohio Public Utilities Commission (filed Aug. 3, 2018) ("Ohio PUC Comments"); Comments of the Michigan Public Service Commission (filed Aug. 6, 2018) ("Michigan PSC Comments"); Comments of the California Public Utilities Commission (filed Aug. 6, 2018) ("California PUC Comments"); Comments of the Pennsylvania Public Utility Commission (filed Aug. 6, 2018) ("Pennsylvania PUC Comments").

[4] *See* Comments of Blackfoot Communications, Inc. (filed Aug. 6, 2018); Opposition of California Internet, LP DBA GeoLinks (filed Aug. 6, 2018); Comments of Full Service Network LP (filed Aug. 6, 2018); Opposition of Snowcrest (filed Aug. 6, 2018); Comments of Raw Bandwidth Telecom, Inc. and Raw Bandwidth Communications, Inc. (filed Aug. 6, 2018); Comments of WorldNet Telecommunications, Inc. (filed Aug. 6, 2018); Opposition of First Communications, LLC (filed Aug. 6, 2018); Motion for Partial Summary Denial and Comments of Cox Communications, Inc. (filed Aug. 6, 2018); Opposition of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications ("MetTel Opposition") (filed Aug. 6, 2018); Opposition of Access Point Inc. et al. (filed Aug. 6, 2018); Opposition of Granite Telecommunications, LLC (filed Aug. 6, 2018); Opposition of INCOMPAS et al. (filed Aug. 6, 2018); Comments of CALTEL (filed Aug. 6, 2018); Comments of the Michigan Internet and Telecommunications Alliance (filed Aug. 6, 2018); Comments of ICG CLEC Coalition (filed Aug. 7, 2018); Letter from Medina County Fiber Network, to Marlene H. Dortch, Secretary, FCC (filed Aug. 6, 2018).

by new competitors and sustained competition by existing competitors. UNE-based and resale-based competition with incumbent local exchange carriers ("incumbent LECs") results in improved services and lower prices for small businesses, community-based organizations, and residential customers in local markets.

II. The Record Reflects Near Universal Opposition to USTelecom's Request for Nationwide Forbearance

The majority of commenters argue that the Commission must look to competition in local markets to justify forbearance. State Regulators (who are in the best position to assess on-the-ground competition) recommend that the FCC analyze the merits of the Petition on a market-by-market basis as it has done in prior proceedings to avoid granting overly broad relief. For example:

- The California PUC urges that the "Commission must analyze USTelecom's petition market-by-market" and "[n]ationwide relief is inappropriate absent more thorough and independent analysis."[5]

- The Michigan PSC argues that "[USTelecom's] forbearance request is overly broad."[6]

- The Ohio Commission "urges the FCC to apply a market-by-market approach, rather than a blanket nationwide approach in determining whether there is adequate competition to justify forbearance."[7]

- The Pennsylvania PUC argues that the Commission "should not forbear without a more granular showing that satisfies the statutory impairment standard" and that "there is insufficient granularity in the data submitted by the Petitioners to justify its forbearance request."[8]

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[5] California PUC Comments at 2.

[6] Michigan PSC Comments at 2.

[7] Ohio PUC Comments at 6.

[8] Pennsylvania PUC Comments at 3.

Although the U.S. Court of Appeals agreed that the FCC did not have to extend the *Qwest Phoenix* market test to its evaluation of competition in the business data service ("BDS") market, that test binds the Commission in this forbearance proceeding.[9] Unlike the BDS proceeding where the Court found that the Commission had already rejected a traditional market power framework for analyzing competition in BDS, the Commission applies a traditional market test in the forbearance context, and, as TPx explained in its initial comments, other forbearance orders diverging from *Qwest Phoenix* are distinguishable.[10]

The State Regulators show that facilities-based competition in local markets is not as robust as USTelecom contends and that claims of nationwide competition are overbroad.[11] For example, the California PUC concluded in its 2016 competition proceeding that although competitive LECs may be able to deploy their own networks in more urban counties such as Los Angeles and San Francisco, they are generally not able to afford to deploy their own networks in less-urban counties where competitive LECs operate.[12] Without the UNE and resale obligations, Michigan PSC expects that following forbearance, some areas in Michigan may "have no competition at all due to the high barrier to entry."[13] The Pennsylvania PUC highlights that the Petition provides "no geographic, company-specific and disaggregated analysis to support the

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[9] *Citizens Telecommunications Company of Minnesota, LLC v. Federal Communications Commission*, No. 172342, p. 22 (Aug. 28, 2018) (noting that application of *Qwest Phoenix* would "extend" the framework to the BDS context after the Pricing Flexibility Order expressly rejected a traditional market power framework for evaluating BDS).

[10] Opposition of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., (collectively "TPx") at 11-16 ("TPx Opposition") (filed Aug. 6, 2018).

[11] *See, e.g.*, Michigan PSC Comments at 2.

[12] California PUC Comments at 26-27.

[13] Michigan PSC Comments at 4.

relief requested [] on a national basis[.]"[14] TPx agrees that absent granular and market-specific evidence of competition justifying forbearance, the Commission should deny the Petition.

III. The Record Shows that UNEs Continue to Enable Market Entry and Sustain Competitive Pressure on Incumbent LECs to the Benefit of Consumers

Comments also agree with TPx that UNEs are a critical input that enables new entry into local markets and sustains competitive pressure — both price and innovation — on incumbent LECs. Forbearance would foreclose entry by new competitors in most markets because of the higher costs associated with negotiating commercial arrangements. For example, the California Public Utilities Commission ("California PUC") found "that none of the competitive carriers in California would be able to build their own networks."[15] "Granite cannot operate effectively in California without access to AT&T's network."[16] The California PUC states that without access to UNEs, CLECs in their state that could not afford to build networks or find a wholesale product to replace lost UNEs would be forced to exit the market.[17]

The record shows that forbearance also would limit the ability of existing competitive providers to extend their networks into nearby markets economically and efficiently as competition allows. Another competitive provider, Sonic Telecom, LLC ("Sonic"), explains that it relies on UNE DS0 and DS1 loops, including using more than 66,000 DS0 loops to serve just under half of its customers.[18] Sonic uses UNEs to gain a critical mass of customers to support the economics of deploying fiber and loss of UNE access would limit or shut down Sonic's ability to

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[14] *See* Pennsylvania PUC Comments at 9-10.

[15] California PUC Comments at 25.

[16] *Id.* at 19.

[17] *Id.* at 26-27.

[18] Opposition of Sonic Telecom, LLC at 5 ("Sonic Opposition") (filed Aug. 6, 2018).

serve current customers or add new customers.[19] Sonic also explains the "robust competitive response" of its use of AT&T UNEs that has led to lower prices and better quality services from incumbent providers after Sonic enters a market.[20]

The record shows that contrary to USTelecom's assertions, legacy services (including provision of POTS through DS0 loops or resale) are relevant in today's telecommunications markets, and commenters widely reject the Petition's reliance on VoIP to show that competition is robust. As the Michigan PUC explains, "VoIP requires a broadband connection to function and while universal broadband may one day be achieved, today there are still large areas of the country that are unserved by broadband providers."[21] The record also shows that customers including federal government agencies, localities, financial institutions, emergency services, daycare centers and more use – and will continue to use – traditional services such as POTS even when VoIP may be available, due to their reliability, security, and/or regulatory requirements.[22]

Price hikes are inevitable if the Commission grants the Petition. For example, the Pennsylvania PUC "notes the USTelecom proposal to increase UNE rates by 15% on the effective date of the grant of forbearance" and expresses concern that carriers could experience the same or similar type of increase with resale as well."[23] In denying Qwest's Phoenix forbearance request, the Commission found that "[i]n the absence of any record evidence that a *de novo* entrant is likely to construct a network in this market in the near future, [the Commission

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[19] Sonic Opposition at 17.

[20] Sonic Opposition at pp. 7, 18 (stating that "Sonic's decision to enter a market typically causes other providers in that market—the ILEC, or in some markets, the incumbent cable provider—to improve their services and lower their prices" and noting the competitive response triggered by Sonic's deployments).

[21] Michigan PSC Comments at 3.

[22] Granite Opposition at 17-19. *See also* MelTel Opposition at 4-6.

[23] Pennsylvania PUC Comments at 11-12.

does] not find the theoretical possibility of such occurrence sufficient to support a finding that [the ILEC, or the ILEC in conjunction with the cable company] would not have the ability to exercise significant market power."[24]

The skimpy record in this proceeding does not demonstrate that rates will remain just and reasonable after forbearance and therefore requires the Commission to reach the same conclusion as it did in the *Qwest Phoenix Forbearance Order*. Congress adopted measures to foster competition without requiring competitors to duplicate the incumbent LECs network.[25] The Commission recognized that new entrants would use UNEs to provide services in some markets until such time as customer demand would dictate that they could deploy networks. The Commission also recognized "that other local markets, now and *even into the future*, may not efficiently support duplication of all, or even some, of an incumbent LEC's facilities."[26] As the record shows, the unbundling obligations continue to serve the purpose envisioned by Congress in adopting the Telecommunications Act of 1996 – at least in some markets – and the loss of access to UNEs would depress competition and increase prices, contrary to the public interest. The Petition should be denied.

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[24] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8667, ¶ 85.

[25] *BellSouth Telecomms., Inc. v. Southeast Tel., Inc. and Kentucky P.S.C.*, 462 F.3d 650, 652 (6th Cir. 2006).

[26] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd. 15499, 15618 ¶ 232 (rel. Aug. 8, 1996).

IV. Verizon's Comments Do Not Remedy the Petition's Failure to Satisfy the Forbearance Test

The record shows that USTelecom has not and cannot carry its burden to provide "*convincing analysis and evidence* to support its petition for forbearance."[27] Verizon's pleading and analysis suffers from the same flaws as the Petition and cannot justify granting nationwide forbearance.

As a threshold matter, neither USTelecom nor Verizon can cure their evidentiary deficiencies in time for the Commission to make a reasoned analysis. The record submitted by Verizon and USTelecom fails to provide the detailed, local market analysis necessary for the Commission and others to analyze the request. Even in the BDS proceeding, the Commission's rulemaking took more than 10 years and involved extensive Commission data requests to industry. Just because USTelecom and Verizon are in a hurry, doesn't mean the Commission, public interest groups, State Regulators and other communications providers have to fast-track or accept USTelecom's shoddy work and unsubstantiated request.

Next, similar to USTelecom, Verizon fails to provide granular analysis of competition in the relevant geographic and product markets and instead argues – without support – that voice and data markets are competitive nationwide. Verizon also argues that nationwide UNE demand is sufficiently low to render UNE and wholesale access requirements obsolete without providing any substantive analysis on a granular level.[28] According to Verizon, significant growth in competition in the BDS market due to increased competitive LEC investment in fiber, growth in Ethernet deployment, and market entry by various cable companies support granting

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[27] *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act,* Report and Order, 24 FCC Rcd. 9543, 9554, ¶ 20 (2009) (emphasis added).

[28] Comments of Verizon at 7-19 ("Verizon Comments") (filed Aug. 6, 2018).

forbearance.[29] Verizon also relies on cable companies to argue that competition is robust, while failing to acknowledge that there are many areas outside of central business districts across the country that are unlikely to ever be served by a cable provider and who would not have a higher bandwidth alternative to the incumbent LEC without competitive LECs' use of UNEs.

Verizon ignores that the Commission must assess competition in the context of a forbearance petition by looking to the "short term" rather than relying on predictive judgments about competition in the "medium term" as the Commission assessed in the *BDS Order*.[30] Because the Petition seeks forbearance, the Commission is bound by the forbearance framework of the *Qwest Phoenix Forbearance Order*. Verizon (and USTelecom) must show that there is sufficient competition in each product and geographic market today to justify forbearance or that entry is likely absent unbundling. They cannot rely on a theoretical possibility that competition may arise in the future.[31] Moreover, the *BDS Order* does not support evaluating competition on a nationwide basis because it adopted a county-by-county competitive market test looking to facilities at or near each BDS customer location.

Verizon argues that the market for voice services is now "fiercely competitive," because at a national level "62 percent of residential consumers receiving wireline voice services (including from ILECs) [now] do so through interconnected VoIP."[32] Moreover, it claims that as of 2018, "only 11 percent of U.S. consumer households are estimated to have an ILEC switched

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[29] *See* Verizon Comments at 8-14.

[30] *See Citizens Telecommunications Company of Minnesota, LLC v. Federal Communications Commission*, No. 172342, p. 24 (Aug. 28, 2018).

[31] *See Citizens Telecommunications Company of Minnesota, LLC v. Federal Communications Commission*, No. 172342, p. 22 (Aug. 28, 2018) (noting that application of *Qwest Phoenix* would "extend" the framework to the BDS context after the Pricing Flexibility Order expressly rejected a traditional market power framework for evaluating BDS).

[32] Verizon Comments at 16-17.

voice connection."[33] However, as discussed above, VoIP is distinguishable from POTS, which remains relevant to customers – in particular governmental and business customers – nationwide despite declines in some market segments, as TPx and others have explained.[34] Nothing in Verizon's comments or the Petition negates or even recognizes the continued relevance of traditional TDM services and the need for UNE-based or resale competition to keep prices for such TDM services just and reasonable.

Second, Verizon downplays the continued importance of UNEs (including loops used for POTS) despite record evidence that UNEs are still used by many competitive LECs. Verizon claims that "[u]se of UNEs accounts for a small share of total use of BDS services. Although a precise estimate is difficult to determine, the share was likely much lower than 20 percent in 2013… 20 percent represents a very conservative upper bound, and the true share is likely much smaller."[35] However, these data points are not sufficiently granular and are contrary to TPx's real-world experience and evidence in the record showing that UNE demand is not declining in all markets and instead that some states have seen increased use of UNEs.[36] For example, CALTEL points out that AT&T California represented to the California PUC that it supplies more UNE loops in 2016 than it did in 2006.[37]

In addition to downplaying the continued importance of UNEs to competition in local telecommunications markets, Verizon conflates "packet-based" Ethernet services with fiber-

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[33] Verizon Comments, Exhibit A at 9.

[34] *See* Granite Opposition at 17-19; MelTel Opposition at 4-6.

[35] Verizon Comments, Exhibit A at 24.

[36] *See* CALTEL Comments at 18-24 (describing increased use of UNEs in California).

[37] *Id.* at 19.

based and HFC-based services and argues that Ethernet is displacing TDM facilities.[38] Verizon's description of the rise of Ethernet ignores the fact that competitive LECs use UNE loops today to provide packet-based EoC at greater speeds and quality than many services that incumbent LECs provide over existing copper. Moreover, some incumbent LECs use legacy copper plant to provide packet-based wholesale – *i.e.*, not unbundled – commercial offerings. Incumbent LECs generally price these offerings in terms of bandwidth, which not only is a more expensive price than the per loop costs for UNEs, but also limits a competitive provider's ability to customize the service it offers as it is able to do using a UNE loop.

Finally, Verizon's claims that UNE and resale obligations deter investment in fiber facilities is belied by reality. Verizon posits that forcing ILECs to continue maintaining legacy services can deter investment in new and innovative technologies.[39] The argument that unbundling deters investment ignores the fact that, under current rules, incumbent LECs are free to retire their copper facilities, relieve themselves of unbundling and resale obligations they now seek forbearance from, and upgrade to fiber.[40] If incumbent LECs do not like their unbundling obligations, current rules include options for them to escape those obligations ***when they deploy fiber***. Yet incumbent LECs continue to rely on copper facilities despite increased flexibility with respect to retiring copper to achieve natural forbearance. Contrary to Verizon's and USTelecom's assertions that forbearance would incentivize fiber deployment, the Commission found that UNE and resale requirements affirmatively incentivize incumbent LECs to upgrade in

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[38] Verizon Comments at 12-13.

[39] *Id.* at 22.

[40] *See* INCOMPAS et al. Comments at 71; CALTEL Comments at 35-38.

next-generation facilities.[41] Neither Verizon nor the Petition provide a reason for the Commission to depart from its prior finding, and rather than supporting a finding that legacy facilities and associated obligations are obsolete, the record shows that incumbent LECs are seeking to get out of their legacy obligations without deploying fiber and to raise rates on their wholesale customers and competitor by eliminating TELRIC pricing and moving to "commercial" negotiations"

V. "Commercial Agreements" Mean Higher Prices and Fewer Options

USTelecom contends that if forbearance is granted, competitive providers will still have access to the critical network inputs they obtain from incumbent LECs today because incumbent LECs will move their wholesale and other customers that rely on regulated UNEs to "commercial agreements."[42] However, there is nothing in the Commission's rules that require incumbent LECs to offer commercial agreements nor are there any protections that such agreements must be commercially reasonable. Instead, it is up to the incumbent LEC whether to offer commercial agreements (or not), and incumbent LECs have the unilateral ability to set terms and/or prices without commercial safeguards. The fact that "neither Frontier nor CenturyLink offer platform service in their legacy territories" underscores that incumbent LECs do not have to – and have declined to – make available commercial replacement services.[43]

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[41] *See Qwest Phoenix Forbearance Order*, 25 FCC Rcd. at 8677, ¶ 108 (stating that "the unbundling obligations associated with legacy DS0 loop facilities, for example, might give Qwest incentives to deploy fiber-to-the-home, which is subject to more limited unbundling obligations").

[42] *See* Verizon Comments at 2, 29 (alleging that Verizon will continue to make available "regulated and commercial wholesale offerings" after the elimination of UNEs).

[43] Opposition of Access Point Inc. et al., at 28.

Moreover, USTelecom and Verizon ignore the fact that "[t]he ability to negotiate fairly is essential to competition."[44] Nowhere do the incumbent LECs concede their inherent, disproportionate bargaining leverage and the absence of a mutual interest in both parties reaching a deal. Instead, incumbent LECs have the incentive and ability to foreclose access to local markets by competitive carriers. TPx agrees with the Ohio PUC that moving to commercial agreements "presumes that CLECs have equal bargaining power with ILECs in negotiating these agreements" and the Commission should "fully investigate and determine whether CLECs truly are at bargaining parity with ILECs before granting any forbearance."[45]

The record reflects the reasons why one-sided commercial agreements are insufficient to preserve competition and innovation made possible through use of UNEs. Sonic Telecom outlines some of the deficiencies of commercial agreements compared to UNEs, in particular the facts that (1) installation of resold services by AT&T can take nearly three weeks compared to three days for delivery of UNE loop(s), (2) commercial agreements often require term commitments (*e.g.*, for one year) compared to UNEs which have no term commitments and (3) installation by AT&T technicians and other factors reduce "Sonic to a simple reseller of AT&T internet service, with little ability to differentiate and improve the product for subscribers."[46] The record also shows that moving away from UNEs and resale obligations to commercial agreements is likely to result in increased rates under commercial agreements. For example, Granite notes that the option of "avoided-cost resale effectively limits the ability of any particular ILEC to demand higher rates under commercial wholesale agreements."[47]

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[44] Ohio PUC Comments at 7.

[45] *Id.* at 6.

[46] *See* Sonic Opposition at pp. 6, 14.

[47] *See* Granite Opposition at 26.

The mere mention of the transition to "commercial agreements" reflects the absurd, Kafkaesque approach the incumbent LECs take toward their networks. Either competitors need access to UNEs or they don't. In arguing for forbearance, USTelecom contends that UNEs are not necessary because of the presence of competitive alternatives. The fact that the incumbents recognize there would be continued, undiminished demand to access their network elements post-forbearance undermines the predicate for forbearance—that the local markets for wholesale services are competitive.

Yet, USTelecom's initial view of the wholesale market would require an immediate 15 percent rate increase when UNEs convert to commercial agreements.[48] The assertion above proves the lack of competitive options for wholesale inputs. Not one of the economists offering statements in support of the Petition have addressed how or why wholesale rates should go up a whopping 15 percent, especially in a diminishing cost and competitive environment. However, competitive providers like Granite are already expecting the price of resold lines to rise following grant of forbearance if commercial agreements.[49] Moreover, the Petition and Verizon fail to explain why they have not sought recourse from the respective state public utility commissions that set TELRIC rates or asked the Commission to complete its long-dormant rulemaking addressing the TELRIC methodology. If the incumbent LECs feel they can increase wholesale rates, then there must not be sufficient competitive pressures elsewhere in the wholesale market to constrain incumbent LEC pricing. In order to adopt the Petition, the FCC must endorse USTelecom's view of "Alice-in-Wonderland" economics and ignore existing regulations that enable USTelecom's members to obtain the relief they seek without causing substantial harm to competition and consumers contrary to the public interest.

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[48] USTelecom Petition at 44.

[49] *See* Granite Opposition, Attachment A, Declaration of Larry Antonellis, ¶ 41-42.

Just as preposterous as the concept of raising rates in a competitive market, is USTelecom's contention that UNEs are no longer necessary. By agreeing to offer "commercial agreements" if forbearance is granted, USTelecom's members implicitly acknowledge that they will just reuse and re-label the facilities that they are already offering to competitors on a wholesale basis. Grant of the Petition does not mean – and nowhere does USTelecom promise – that any services offered under "commercial agreements" will be moved off copper onto fiber. USTelecom can't make such a promise because all its members might do, if they offer commercial replacement services, is provide a new name – and higher cost – for the same copper elements in use today, or they will sell only wholesale services using the same copper facilities, limiting competitors' ability to differentiate themselves – and their services – from the incumbent LECs.

The Commission must avoid the siren's song of "commercial agreements." There is nothing in the Telecommunications Act of 1996 that has or would prohibit incumbent providers from offering services via commercial negotiations regardless of whether they are granted forbearance. Section 252(a)(1), for example, contemplates voluntary negotiations and allows the carriers to enter into a binding agreement "without regard to the standards set forth in subsections (b) and (c) of section 251 of the title." Yet, the incumbent LECs have not chosen that path. Rather, they seek to escape regulatory obligations when alternative options are available to them (*i.e.*, voluntary negotiations and/or natural forbearance).

The Commission cannot make a reasoned analysis of the impact of a grant of forbearance without understanding the commercial terms the incumbent LECs intend to offer. It has been four months since USTelecom filed its Petition, and no incumbent LEC has offered even a rudimentary outline of a proposed commercial agreement despite repeated requests and promises

to deliver "soon." One company's representative recently asked a TPx executive "what do you need?" That question highlights the folly in this exercise. Failure of the incumbent LECs to offer guarantees about their intended commercial agreements (e.g., through submitting model and/or binding agreements) is itself grounds for competitive concerns that the Commission must take seriously.

Competitive entrants have used UNEs along with other technologies to offer a wide array of customized solutions and innovative products. Since the passage of the Telecommunications Act of 1996, innovation has come from the new entrants and innovation by new entrants sparks upgrades by incumbent providers. Eliminating UNEs and moving to commercial agreements will destroy that innovative ecosystem as the market will shift from fast-moving innovation driven by competition to one bound by the restrictions of the commercial terms mandated by the incumbents. The Petition invites the Commission to adopt a Hush-A-Phone ruling for copper loops that would limit competitive providers' ability to innovate and distinguish their services. The Commission should deny USTelecom's invitation.

VI. Conclusion

The overwhelming evidence in the record shows that forbearance from UNE and resale obligations on a nationwide basis is contrary to the public interest. USTelecom has failed to provide even a scintilla of "convincing analysis and evidence" that satisfies the forbearance test, and Verizon's contribution to the record fares no better. Verizon and the Petition fail to define or analyze the product markets, demonstrate the availability of competitive alternatives at the customer location, or demonstrate why and how rates would remain just and reasonable after forbearance. Even if the Petition and supporting comments from Verizon are viewed in the most favorable light, the Commission must deny the Petition.

Respectfully submitted,
/s/ Andrew D. Lipman

Andrew D. Lipman
Tamar E. Finn
Patricia Cave
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541
202.739.3000 (tel)
202.739.3001 (fax)
Counsel for U.S. TelePacific Corp., Mpower Communications Corp. and Arrival Communications, Inc., all d/b/a TPx Communications

/s/ William P. Hunt III

William P. Hunt III
SVP, General Counsel and Secretary
TPx Communications
515 S. Flower Street, 45th Floor
Los Angeles, CA 90071
(303) 268-5420